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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,069	01/14/2004	Nicholas J. Topitzes	074112-0126	5365

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EXAMINER

POLLICOFF, STEVEN B

ART UNIT PAPER NUMBER

3728

DATE MAILED: 11/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/757,069	<b>Applicant(s)</b> TOPITZES ET AL.	
	<b>Examiner</b> Steven B. Pollicoff	<b>Art Unit</b> 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 August 2006.
- 2a) ☒ This action is FINAL.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3,5-11,13,15-21,23 and 25-30 is/are pending in the application:
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,5-11,13,15-21,23 and 25-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1,11 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Czopor, Jr. (US Pat 4,619,364) in view of Browning (US Pat 4,621,404).

With respect to claims 1,11 and 21, Czopor discloses all of the limitations of the claims (as can be seen in the 1st office action dated 5/16/06) except for a reinforcement rib extending from a first edge of the ceiling to a second edge of the ceiling, the second edge opposed to the first edge. However, Browning discloses a ceiling/first molded piece (Browning Fig 1 ref 10) having a reinforcement rib (50) extending from a first edge of the ceiling to a second edge of the ceiling, the second edge opposed to the first edge for the purpose of providing additional strength and rigidity to the ceiling/first molded section (column 4, lines 41-46). Therefore, it would have been obvious to one having

Art Unit: 3728

ordinary skill in the art at the time the invention was made to modify the ceiling of Czopor to include a reinforcement rib across opposed first and second edges, as taught by Browning, for providing better structural integrity and additional support against impact forces that may damage the contents of the holder.

Claims 3,5,6,13,15,16,23,25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Czopor '364 in view of Browning '404 as applied to claims 1,11 and 21 above and further in view of Proffitt et al., (US Pat 5,012,928).

With respect to claims 3,13 and 23, Czopor as modified above does not disclose that cut score lines extend partially through the hinge. However, Proffitt discloses a thermoformed plastic container comprising a cover and a platform integrally connected by a hinge with cut score lines (Proffitt column 3 lines 8-13). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the hinge of Czopor as modified to include cut score lines, as taught by Proffitt, for the purpose of more easily separating the cover from the platform if desired.

With respect to claims 5,6,15,16,25 and 26 Czopor discloses that each receptacle has an integrally formed first and second protrusion to narrow the width at the first and second protrusion (Czopor Fig 1 reference number 36).

Claims 7-10,17-20 and 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Czopor '364 in view of Browning '404 and Proffitt et al., '928 as applied to claims 1,3,5,6,11,13,15,16,21,23,25 and 26 above and further of Prinsloo et al., (US Pat 4,674,628).

Art Unit: 3728

With respect to claims 7,17 and 27, Czopor as modified above does not disclose that the protrusions narrow the width at a common distance along the length. However, Prinsloo discloses a card holding device having slots (Prinsloo Fig 2 reference number 28) with protrusions (34,36) that narrow the width a common distance along the length so that a card can be inserted between them and gripped (column 4 lines 2-5). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the protrusions of Czopor as modified so that they align to narrow the width a common distance along the length of the receptacle for better gripping of the contents to be inserted.

With respect to claims 8,9,18,19,28 and 29, while Czopor as modified above does not disclose that the common distance is at a midpoint of the length or offset from the midpoint by one-quarter of the length, it would have been an obvious matter of design choice to one of ordinary skill in the art at the time of the invention to have the protrusions placed at the midpoint of the length or one-quarter of the length from the midpoint, since Applicant has not disclosed that by doing so solves any state problem or is for any particular purpose and it appears that the invention would perform equally well (gripping the contents) with the staggered protrusion arrangement as shown in Fig 1 of Czopor.

With respect to claims 10,20 and 30, while Czopor as modified above does not disclose that the first and second receptacle walls have integral third and fourth protrusions at a distance offset from the midpoint by one-quarter of the length, it would have been obvious to one of ordinary skill in the art at the time the invention was made

Art Unit: 3728

to include additional protrusions within the receptacle at various points from the midpoint to increase the gripping capability to better retain a badge/card/license within that receptacle, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1,3,5-7,11,13,15-17,21,23, and 25-27 have been considered but are moot in view of the new ground(s) of rejection. Examiner finds Applicant's arguments regarding claims 8-10,18-20 and 28-30 unpersuasive. In response to Applicant's argument that the prior art fails to teach holding name badges, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Mashman*, 2 USPQ 2d 1647 (1987). Here, Czopor clearly teaches the claimed structural limitations, as Applicant does not positively recite name badges as a further limitation and certainly Czopor is capable of holding name badges. In response to Applicant's argument that the staggered protrusions of Czopor may bend name badges and therefore not an obvious design choice, Applicant fails to show where Czopor teaches bending of an object held in the protrusions. It is reasonable to think that the bending of an object, such as a name badge, has more to do with the material and thickness of the material used rather than stationary protrusions intended to hold the object inserted.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

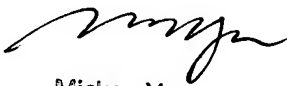
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. Pollicoff whose telephone number is (571)272-7818. The examiner can normally be reached on M-F: 7:30A.M.-5:00P.M. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or

Art Unit: 3728

Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

4/10P  
SBP 10/18/06

  
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